

<b>LOYOLA BAIN</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CORMACK ENTERPRISES, INC.</b>	)	Docket No. 222,967
Respondent	)	
AND	)	
	)	
<b>CONTINENTAL WESTERN INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

Medical treatment is denied.

The request for attorney fees is denied as it was unreasonable for counsel to pursue a request that the Claimant be allowed to direct her medical treatment with one specified chiropractor.

Claimant contends the Judge erred. Claimant argues that the evidence is uncontradicted that she needs chiropractic treatment to relieve the effects of her March 21, 1997 work-related accident. Therefore, claimant requests the Board to order additional treatment with Dr. Stanley J. Farr. Additionally, claimant argues that the Board should award her attorney fees in the sum of \$900 (six hours at \$150 per hour) for the legal services rendered in this post-award proceeding at the administrative law judge level and an additional \$1,275 (eight and one-half hours at \$150 per hour) for the legal services provided in this appeal to the Board for a total of \$2,175.

Conversely, respondent and its insurance carrier contend the Order denying treatment and attorney fees should be affirmed. They argue that the Judge properly denied additional treatment as (1) Dr. Farr has allegedly expressed inconsistent opinions, (2) there are gaps in claimant's treatment, and (3) it is questionable whether claimant's present chiropractic treatment is being provided for the March 1997 work-related accident or for another unrelated cause. Respondent and its insurance carrier also argue that the Judge properly denied the request for attorney fees as the request for treatment with Dr. Farr was unreasonable.

The issues before the Board on this appeal are:

1. Should claimant be entitled to receive additional chiropractic or other treatment?
2. Is claimant entitled to an award for attorney fees for the legal services rendered in this post-award matter?

#### **FINDINGS OF FACT**

After reviewing the record, the Board finds:

1. This is a post-award request for additional treatment. This claim was initially decided by Judge Benedict on July 15, 1998, when claimant was awarded a four percent permanent partial general disability. The Judge also awarded claimant, as authorized treatment, the medical expenses that she had incurred after April 2, 1997, through the date of the Award (July 15, 1998) with her personal chiropractor, Dr. Stanley J. Farr. The Judge specifically noted in the Award that future medical treatment would be considered upon proper application.
2. Respondent and its insurance carrier appealed the July 15, 1998 Award to the Board, which affirmed the Award. Later, the Kansas Supreme Court affirmed the Board's decision.

3. This claim is for a March 21, 1997 accident. But, even before that accident, claimant had received treatment from Dr. Farr off and on for several years. Following the March 1997 accident, claimant returned to Dr. Farr for treatment, which has continued through the present.

4. In October 1999, claimant sought authorization for additional chiropractic treatment. In support of that request, claimant obtained a September 14, 1999 note from Dr. Farr, which reads:

Ms. Loyola Bain [claimant] continues to require Chiropractic care to support and stabilize her spinal condition from her job related injury of March 21, 1997. She has lowback [sic] instability with neuralgia and muscle spasms resulting from this injury. Ms. Bain has been treating weekly and has never gone more than two weeks since her accident. In my opinion, Ms. Bain has not recovered and continues to need Chiropractic adjustments at least two times a month.

5. By letter to Dr. Farr dated November 9, 1999, respondent and its insurance carrier then authorized Dr. Farr to provide claimant two chiropractic adjustments per month for a period of six months. The pertinent portions of that letter read:

In your note of September 14th, you have expressed your opinion that Ms. Bain will continue to need chiropractic adjustments for at least two times a month. These are related back to her job injury of March 21, 1997.

Please be advised that this correspondence will serve to confirm you are authorized to provide two chiropractic adjustments per month for a period of six months at which time this matter will be reevaluated. . . .

6. Although the limited authorization to see Dr. Farr expired in May 2000, claimant continued to treat with the doctor. At an undisclosed point in time, claimant arranged for her personal health insurer to pay a portion of Dr. Farr's treatment expense.

7. In November 2000, claimant again asked respondent and its insurance carrier for additional authorized treatment with Dr. Farr. That request read:

You are hereby notified of claimant's intent to file an Application for Preliminary Hearing, pursuant to K.S.A. 44-534(a). Please consider this letter as claimant's demand for payment of temporary total disability benefits. Such application will be filed with the Director of Workers Compensation seven (7) days after the date of this letter, if you do not agree to the requested change of benefits.

The specific change in benefits sought by claimant is: to pursue ongoing medical treatment with the authorized treating physician, Dr. Stanley

Farr. Furthermore the Respondent is obligated to pay a reasonable attorney fee to Claimant's counsel as this is a post-award matter.

If both temporary total disability and medical benefits are being provided at the present time, no application for preliminary hearing will be filed so long as these benefits continue to be provided. If either temporary total benefits or medical benefits are stopped without the agreement or approval of claimant, an application for preliminary hearing will be filed with the Director without further notice to you.

You should also consider this letter as written claim for all workers compensation benefits due my client under the laws of the state of Kansas by virtue of the above-referenced accident.

If this letter is directed to an insurance carrier or attorney, it is presumed that you are accepting this letter as claim for compensation and seven (7) day notice of preliminary hearing on behalf of the employer, unless you advise in writing to the contrary.

Following that request, claimant filed an Application for Preliminary Hearing.

8. Attached to the documents introduced at the February 28, 2001 hearing before Judge Benedict are a note dated March 17, 2000, and a letter dated October 2, 2000, both from Dr. Farr. The March 17, 2000 note reads:

Ms. Loyola Bain is still receiving Chiropractic care to support and stabilize her spinal condition from a job related injury on March 21, 1997. Ms. Bain has been treated on a weekly basis for most of the last year and has never gone more than two weeks since the accident. Her treatment of two Chiropractic adjustments per month was authorized for six months and needs to be authorized again. Ms. Bain has not recovered and continues to need Chiropractic adjustments at least two times a month for the neuralgia and muscle spasms attributable to this accident. Please authorize her continued care.

The October 2, 2000 letter reads:

Loyola Bain continues to be treated in my clinic for a lowback [sic] instability with neuralgia and muscular symptoms attributed to a job related injury on March 21, 1997. Ms. Bain rarely is able to go longer than one week without having significant problems. In my opinion, Ms. Bain will continue to need treatment for the foreseeable future at least two times each month. I would estimate her Chiropractic care to be over \$750 annually for the next 10-20 years.

I hope this helps to clarify her need for care.

9. At the February 28, 2001 hearing, claimant's attorney stated that claimant was not insisting that Dr. Farr be appointed for additional treatment but was merely asking for additional medical treatment. Claimant's counsel also explained that the request for treatment was worded in the way it was because Dr. Farr had been previously authorized to provide treatment.

#### CONCLUSIONS OF LAW

1. The Order denying treatment should be reversed and an Order entered directing respondent and its insurance carrier to provide claimant medical treatment. The Board also concludes that claimant is entitled to post-award attorney fees.

2. The evidence presented at the February 28, 2001 hearing is uncontroverted that claimant needs additional treatment for the injuries received in her March 21, 1997 work-related accident. Therefore, claimant should receive additional medical benefits. The Workers Compensation Act provides, in part:

(a) At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. . . . The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. . . .

(b) . . . The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment relating back to the entry of the underlying award, but in no event shall such medical treatment relate back more than six months following the filing of such application for post-award medical treatment. . . .

(c) The administrative law judge may award attorney fees and costs on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536 and amendments thereto.<sup>1</sup>

3. Based upon the statements made at the February 28, 2001 hearing, the Board concludes that claimant did not intend to limit the request for additional treatment to only

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<sup>1</sup> K.S.A. 44-510k.

Dr. Farr's chiropractic treatment. The Board also concludes that respondent and its insurance carrier should provide claimant a treating health care provider.

4. The Board finds and concludes that claimant's attorney has expended approximately 14.5 hours pursuing the post-award request for additional medical benefits. Multiplying those hours by \$125, which the Board finds is a reasonable hourly rate for the work performed, the Board concludes that claimant should receive an award for post-award attorney fees in the sum of \$1,812.50.

**AWARD**

**WHEREFORE**, the Board reverses the February 28, 2001 Order and grants claimant's request for post-award medical benefits and attorney fees. Respondent and its insurance carrier are ordered to provide claimant with a health care provider. In the event respondent and its insurance carrier do not name an authorized treating doctor for claimant within 10 days, Dr. Stanley J. Farr is appointed the authorized doctor. The Board grants claimant the sum of \$1,812.50 for post-award attorney fees. The Board assesses the administrative costs of the February 28, 2001 hearing to respondent and its insurance carrier.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2001.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Paul D. Post, Topeka, KS  
Jeffery R. Brewer, Wichita, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director